



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/13/02	Bill No:	AB 2014
Tax:	Sales and Use	Author:	Harman
Board Position:	Neutral	Related Bills:	

BILL SUMMARY

This bill would require the Board to distribute to the operator of a swap meet, flea market, or special event an explanation of the sales tax law and a statement of the penalties for violating that law.

ANALYSIS

Current Law

Every person desiring to engage in business in this state as a seller of tangible personal property shall apply for a seller's permit with the Board. Due to the unique nature of swap meets, flea markets, and other special events, Section 6073 of the Revenue and Taxation Code provides that the Board may require the operator of a swap meet, flea market, or special event to obtain written evidence that the seller holds a valid seller's permit. A person making sales at a swap meet, flea market, or special event may obtain a temporary seller's permit if that person does not hold a regular seller's permit. There is no fee to obtain a permit.

Proposed Law

This bill would add Section 6073.3 to the Sales and Use Tax Law to require the Board to distribute to the operator of swap meet, flea market, or special event a one-page explanation of the sales tax law that includes, but is not limited to, a description of a vendor's obligation and a statement in bold face type explaining the penalties for violating the sales tax law. This bill would also require the operator of the swap meet, flea market, or special event to distribute the sales tax law explanation and the statement of penalties described above to each vendor upon registering the vendor to conduct business at a swap meet, flea market, or special event.

This bill would also provide that any operator of a swap meet, flea market, or special event who willfully on three or more operating days within a 12 month period fails or refuses to distribute the materials proposed in this bill would be subject to a penalty not exceeding \$2,500.

This bill also provides that the proposed law would not apply to any charitable nonprofit organization that is the operator of a swap meet, flea market, or special event.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position

Background

Recognizing that sellers at swap meets and flea markets may attempt to evade sales tax by operating without a seller's permit, the Legislature passed a law in 1973 that requires the operator of the swap meet or flea market to obtain written evidence that the seller is the holder of a valid seller's permit. If the event operator fails or refuses to obtain the necessary information from the seller, the event operator is subject to a penalty not to exceed \$1,000.

To ensure compliance with this provision, the Board will typically have staff work with an event operator to ensure that the necessary information is obtained and also to verify that the permit information gathered by the event operator is valid. It is not unusual for the staff person to visit the swap meet or flea market to verify that all persons selling at the event have the proper permit.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author in an effort to increase tax reporting compliance by persons who are selling at swap meets, flea markets, and special events.
2. **Summary of amendments.** April 1 amendments deleted from this bill the requirement that the Board report to the Legislature annually regarding audits of sellers at swap meets, flea markets, and special events. Also, as suggested in the Board's previous analysis, the penalty provision, not to exceed \$1,000, for an operator who fails to distribute the necessary materials was added to this bill.

April 16 amendments modified the penalty provisions to provide that any operator who willfully, and on three or more occasions within a twelve month period fails to comply with the provisions of this bill would be subject to a penalty not to exceed \$5,000.

Proposed amendments would modify the penalty provisions by substituting operating days for occasions and reduce the penalty amount from \$5,000 to \$2,500. Proposed amendments would also provide definitions for terms and provide that this section would not apply to any charitable nonprofit organization that is an operator of a swap meet, flea market, or special event.

3. **One-page explanation.** This bill would require the Board to distribute to the operator of a swap meet, flea market, or special event a one-page explanation of the sales tax law. Required to be included in this one-page explanation would be a description of a vendor's obligation and a statement in bold type explaining the penalties for violating the sales tax law. Limiting the statement by statute to one-page may result in the exclusion of important information from the document to be distributed, and thus, of limited value. It is recommended that the bill be amended to require the Board to distribute a "brief explanation" rather than a "one-page explanation" so the Board would have more flexibility in preparing such a document for distribution.

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- 4. Penalty for failure to comply.** This bill would require the operator of the swap meet, flea market, or special event to distribute the explanation provided by the Board to each vendor upon registering the vendor to conduct business at the event. In order to enhance compliance, this bill provides penalty provisions that may be imposed on an operator for failure to comply with the provisions of this bill. Any operator of a swap meet, flea market, or special event who willfully, and on three or more operating days within a 12-month period, fails or refuses to comply with the provisions of this bill is subject to a penalty not exceeding \$2,500. Enforcement of the proposed penalty would be the responsibility of the Board. Any operator assessed with the proposed penalty would have the right to appeal the proposed penalty within 30 days after notice of the penalty.
- 5. Provisions of this bill would not apply to charitable nonprofit organizations.** Any charitable nonprofit organization that is an operator of a swap meet, flea market or special event would not be subject to the provisions of this bill. However, any nonprofit charitable organization that is an operator of a swap meet, flea market or special event would still be subject to the provisions of current law that requires the operator to obtain written evidence that the seller holds a valid seller's permit. Also, any sellers or vendors at such a swap meet would still be required to obtain a seller's permit and remit the appropriate amount of sales and use tax.
- 6. Definitions.** This bill provides that the terms "swap meet," "swap meet operator," and "vendor" have the same meaning as specified in Section 21661 of the Business and Professions Code. Section 21661 defines a "swap meet" as any event at which two or more persons offer personal property for sale or exchange and either a fee is charged for the privilege of offering or displaying personal property for sale or exchange, or a fee is charged to prospective buyers for admission to the area where personal property is offered or displayed for sale or exchange, or regardless of the number of persons offering or displaying personal property or the absence of fees, at which used personal property is offered or displayed for sale or exchange if the event is held more than six times in any 12-month period. The term "swap meet operator" is defined as any person, partnership, organization or corporation which controls, manages, conducts or otherwise administers a swap meet. The term "vendor" is defined as any person, partnership, organization or corporation who exchanges, sells, or offers for sale or exchange any personal property at a swap meet.

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COST ESTIMATE

Some costs would be incurred in preparing and distributing the forms required by this bill. These costs are expected to be absorbable.

REVENUE ESTIMATE

The provisions of this bill are not expected to impact state or local revenues.

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